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January 14, 2009

BY HAND

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2010 JAN 15 PM 12:30  
OFFICE OF GENERAL  
COUNSEL

Re: MUR 6234

Dear Mr. Jordan:

We are writing this letter on behalf of Friends of Mary Landrieu Inc. (the "Committee") and Nancy Marsiglia, as treasurer, (collectively referred to as the "Respondents") in response to the Complaint filed in the above-referenced matter by Citizens for Responsibility and Ethics in Washington and Melanie Sloan (collectively referred to as the "Complainants"). For the reasons set forth below, the Complaint should be immediately dismissed.

The Commission may find "reason to believe" only if a complaint sets forth sufficient specific facts, which, if proven true, would "describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. §§ 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons, MUR 4960 (Dec. 21, 2001).

Here, the Complaint's sole allegation is that the Committee made an expenditure of \$25,300 to the U.S. Treasury on August 7, 2008. The Complaint falsely asserts that a

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committee may "disgorge contributions to the U.S. Treasury voluntarily only when the Justice Department is pursuing a criminal investigation or prosecution of the contributions." See Compl. at 5. On the contrary, when there is a "factual dispute as to the actual source of contributions," the Commission has repeatedly advised committees to make a disbursement to the Federal Government, any state or local government entity, or a qualified charitable organization in an amount equal to the total amount of contributions for which the committee cannot determine the identity of the original contributor. See FEC Adv. Ops. 1991-19, 1991-39.

As detailed below, the Committee's disbursement to the U.S. Treasury was wholly consistent with Commission precedent. Because the Complaint contains no facts to support an allegation that Respondents have violated the Federal Election Campaign Act of 1971 (the "Act") or Commission regulations, the Complaint must be dismissed.

In May of 2005, the Committee received a series of six contributions payable by cashier's checks issued by Whitney National Bank in New Orleans, LA. The contributions, which totaled \$25,300, were forwarded to the Committee by a Louisiana attorney. Although there was no firm evidence that the contributions were from an unlawful source or in the name another, out of an abundance of caution the Committee sought to confirm the legality of each contribution by contacting the individual contributors by mail and telephone. When the Committee reached one of the contributors by telephone, she stated that she had no knowledge of making any such contribution to the Committee. As a result, the Commission concluded, again out of an abundance of caution, that there was "sufficient basis to question the lawfulness" of each of the contributions forwarded by the Louisiana attorney. Because the Committee could not, "under the circumstances, determine the identity of the original contributor[s]," the Committee took immediate ameliorative action by making a disbursement to the U.S. Treasury. See FEC Adv. Op. 1995-19. The amount of the disbursement to the U.S. Treasury was equal to the total amount of the contributions originally forwarded by the Louisiana attorney.

As referenced in the Complaint, if a political committee treasurer receives and deposits a contribution, but "later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit," Commission regulations require the treasurer to refund the contribution to the contributor within 30 days after discovering the illegality. See 11 C.F.R. 103.3(b)(2). However, if a committee has "sufficient basis" to question whether a contribution may have been made in the name of another, it may not be feasible – or appropriate – to refund the contribution to the original contributor.

In such cases, the Commission has concluded that a committee should act precisely as the Respondents acted in this matter. For example, in 1995, when newspaper accounts alleged that certain contributors to the Indian-American Leadership Investment Fund (the "Fund") did not have the financial means to make the contributions that had been reported by the Fund, the Commission affirmed that the information described in the accounts presented a "sufficient basis" for the committee to question the legality of the contributions at issue. The Commission advised that the Fund should exercise "best efforts at determining the legality" of the contributions in question. Such efforts may include seeking written confirmation from the contributors of the contributions' legality or contacting the contributors by telephone and requesting oral confirmation. Where the "identified donors do not provide confirmation of legality," the amount of the contributions should be disbursed "for any of the lawful purposes listed in Advisory Opinion 1991-39, and not for a purpose related to any of the Fund's activities." See FEC Adv. Op. 1995-19.

Pursuant to Advisory Opinion 1991-39, where a committee cannot "determine the identity of the original contributor, [funds equal to the total amount of questioned contributions] shall be disbursed by the [c]ommittee for a lawful purpose unrelated to any Federal election, campaign, or candidate. An appropriate purpose would include the Federal Government, any state or local government entity, or a qualified charitable organization described in 26 U.S.C. 170(c)." See FEC Adv. Op. 1991-39.

Although the Fund in Advisory Opinion 1995-19 had provided information related to the contributions at issue to the Federal Bureau of Investigation, the Commission did not cite the FBI's investigation as a determinative factor in concluding that the Fund had sufficient basis to question the legality of the contributions. See FEC Adv. Op. 1995-19. And while the grand jury indictment cited in Advisory Opinion 1991-39 provided sufficient basis to question the legality of certain contributions, the Commission did not rely on the indictment in concluding that funds should be disbursed "for a lawful purpose unrelated to any Federal election, campaign, or candidate." See FEC Adv. Op. 1991-39.

Contrary to what is asserted in the Complaint, the Commission has never *required* evidence of an indictment, conviction, or formal investigation before advising committees to disgorge illegal contributions. Instead, the Commission has advised committees to make such disbursements whenever the committees cannot "determine the identity of the original contributor." See *id.* Even if a committee knows the identity of an individual who has made an illegal contribution, the Commission routinely requests such committee to either refund or disgorge the contribution within thirty days after

Jeff S. Jordan  
January 14, 2009  
Page 4

discovering the illegality. *See* FEC Adv. Op. 1996-5; *see, e.g.*, MUR 5279, Notification to Pascarell for Congress, Inc., Aug. 19, 2004.

Here, because the Committee had sufficient basis to question the legality of certain contributions and could not determine the identity of the original contributor of the contributions in question, the Committee's decision to disgorge the funds by making a disbursement to the Federal government was entirely permissible. *See* FEC Adv. Op. 1995-19.

In sum, the Complaint does not allege any facts that would describe a violation of federal election law on the part of Respondents. Pursuant to 11 C.F.R. § 111.4(d), Respondents respectfully request that the Complaint be immediately dismissed.

Very truly yours,



Marc Erik Elias

Kate Sawyer Keane

Counsel to Friends of Mary Landrieu Inc. and Nancy Marsiglia, Treasurer